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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

AMERICANS FOR PROSPERITY,

Plaintiff,

v.

GURBIR GREWAL, in his official capacity as Attorney General of New Jersey, **ERIC H. JASO**, in his official capacity as Chairperson of the New Jersey Election Law Enforcement Commission, **STEPHEN M. HOLDEN**, in his official capacity as Commissioner of the New Jersey Election Law Enforcement Commission, and **MARGUERITE T. SIMON**, in her official capacity as Commissioner of the New Jersey Election Law Enforcement Commission,

Defendants.

Civil Action No. _____

ECF Case

**COMPLAINT AND JURY TRIAL
DEMAND**

Document electronically filed

* *Pro hac vice* applications to be submitted.

Plaintiff, Americans for Prosperity (1310 N. Courthouse Road, Ste. 700, Arlington, VA 22201), by way of Complaint against Defendants, Gurbir Grewal, in his official capacity as Attorney General of New Jersey (Office of the Attorney General, Hughes Justice Complex, 25 Market Street, Box 080, Trenton, New Jersey 08625); Eric H. Jaso, in his official capacity as Chairperson of the New Jersey Election Law Enforcement Commission (New Jersey Election Law Enforcement Commission, P.O. Box 185, Trenton, NJ 08625); Stephen M. Holden, in his official capacity as Commissioner of the New Jersey Election Law Enforcement Commission (New Jersey Election Law Enforcement Commission, P.O. Box 185, Trenton, NJ 08625); and Marguerite T. Simon, in her official capacity as Commissioner of the New Jersey Election Law Enforcement Commission (New Jersey Election Law Enforcement Commission, P.O. Box 185, Trenton, NJ 08625), alleges as follows:

INTRODUCTION

1. The First Amendment safeguards the rights of individuals to associate privately and advocate anonymously. These rights are essential for citizens to exercise their freedoms of speech, expression, and association. Accordingly, any restriction on these rights is subject to “exacting scrutiny.” Courts applying this standard draw a clear line between electioneering communications and issue advocacy, with attempts to regulate the latter strongly disfavored. Protecting the

integrity of elections may, in certain circumstances, be a sufficiently important reason to justify, under exacting scrutiny, regulation of electioneering communications. The same is not true for issue advocacy. Rammed through in a rush to extract political revenge, Senate Bill No. 150¹ (“S150” or “the Act”) obliterates this fundamental distinction and oversteps constitutional bounds by subjecting *issue advocacy* to the formidable regulations and burdens properly reserved for *electioneering*.

2. Only by granting preliminary and permanent relief can this Court vindicate the First Amendment liberties at stake and protect against damaging chill and irreparable harm to donors nationwide.

3. Despite signing S150 into law, New Jersey Governor Phil Murphy conditionally vetoed the *identical* bill less than a month earlier on multiple constitutional grounds, then reiterated those same concerns when signing S150. Governor Murphy recognized that, by regulating and imposing disclosure requirements on some (but not all) types of entities engaged in legitimate policy-

¹ Senate Bill No. 150 is the bill that the Legislature passed on June 10, 2019 and the Governor signed on June 17, 2019. S150 is identical to Senate Bill No. 1500, which the Legislature passed on March 25, 2019 and the Governor conditionally vetoed on May 13, 2019, as discussed further below. Unless otherwise specified, this Complaint cites to S150 as the operative law.

based advocacy, S150 transgressed the bright line repeatedly enforced by both the Supreme Court and this Court.

4. Specifically, S150 regulates and imposes disclosure requirements on Independent Expenditure Committees (“IECs”), which the Act defines as 501(c)(4) or 527 organizations (but not myriad other types of entities) that raise or spend an aggregate of \$3,000 annually on any of the following activities: (1) influencing elections; (2) influencing legislation; or (3) providing “political information.” “Political information,” in turn, is defined to include any statement made through any medium that reflects the organization’s opinions *or* that contains facts on any candidate or public question, legislation, or regulation. There is no other limit to the breathtaking sweep of this law—for example, nothing in the Act requires that a communication occur within a certain temporal window before an election, use certain media, reach a certain number of people, or even target any recipient in New Jersey in order to trigger coverage.

5. Any group that engages in these constitutionally-protected activities is subject to the onerous requirement of filing quarterly reports disclosing the name, address, occupation, employer, and employer’s address of any donor, nationwide, who contributes more than \$10,000, as well as listing any expenditure by the group in excess of \$3,000. Disclosure is required whether or not a donor intended his or her donation to be used for issue advocacy in New Jersey, or has any other

connection with New Jersey. The reports are then posted publicly on the New Jersey Election Law Enforcement Commission (“ELEC”) website for consumption nationwide and, indeed, globally. Failure to properly file a report can result in civil penalties, and deliberate failure to do so is a crime in New Jersey.

6. This stunningly broad reach of S150 leaps far beyond anything the First Amendment permits. If the law takes effect, merely stating facts or offering opinions about laws, or even regulations, will trigger invasive disclosure requirements and daunting burdens of the sort reserved for regulation of electioneering advocacy that solicits votes for named candidates. No such bid by the government to equate mere conveyance of factual information and issue advocacy with electioneering can possibly withstand exacting scrutiny.

7. Remarkably, New Jersey enacted S150 even though virtually identical provisions in prior statutes were struck down as unconstitutional or drastically limited in order to salvage them. In *ACLU of New Jersey v. New Jersey Election Law Enforcement Commission*, 509 F. Supp. 1123 (D.N.J. 1981), a three-judge panel of this Court struck down a disclosure requirement that was virtually identical to this Act’s “political information” provision, holding that “[t]he broad language” of the statute was “susceptible to no narrowing reading which would obviate its constitutional problems.” *Id.* at 1133. Similarly, in *New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Commission*, 411 A.2d 168

(N.J. 1980), the New Jersey Supreme Court had to perform “judicial surgery” to save a statutory provision effectively identical to this Act’s “influencing legislation” provision, sharply limiting that statute such that it could reach only direct attempts to lobby legislators. *Id.* at 180. There is no reason why the provisions at issue should fare any better this time around.

8. The Act’s “influencing elections” provision sweeps far too broadly as well. Unlike other federal and state campaign finance regimes that have been upheld as constitutional, S150 has no guardrails to ensure that the speech it regulates has a sufficient nexus to any New Jersey election. S150 imposes no limitations as to time, medium, or audience, nor is its coverage limited to electioneering and issue advocacy. A group risks compelled disclosure of its donors if it makes a mere *factual* statement over a year before an election via a newsletter sent to members outside New Jersey concerning an issue that somehow relates, even tangentially, to a New Jersey officeholder or issue. Where campaign finance regimes fail to impose such guardrails, courts have construed those laws to regulate only express advocacy for the sake of avoiding unconstitutional overreach. *See Buckley v. Valeo*, 424 U.S. 1, 80 (1976).

9. In addition to being unconstitutionally *overinclusive*, the Act is also *underinclusive*. It applies *only* to 501(c)(4) and 527 organizations even as *many other* types of entities seek to influence elections, influence legislation, or provide

political information. That underinclusiveness highlights the lack of fit between the Act's chosen means and its claimed objectives. If New Jersey's legislature seriously wanted to regulate these kinds of activities, it would not have singled out 501(c)(4)s and 527s while ignoring all other organizations.

10. Beyond being facially unconstitutional, the Act is also unconstitutional as-applied to Plaintiff Americans for Prosperity ("AFP"). AFP's views are not universally popular, and experience has, unfortunately, shown that its donors will face threats, harassment, and reprisals if their names are publicly disclosed. Those supporters of AFP who have become publicly known (either by choice or otherwise) have faced repercussions ranging from threats to kill or maim to boycotts, firings, and public shaming. Not surprisingly, many donors to AFP insist that their personal information be kept private, and AFP zealously protects donor confidentiality to ensure their personal safety and safeguard their trust. Public disclosure will make individuals less likely to donate and will chill their exercise of their First Amendment rights to associate freely and advocate for issues that matter to them.

11. Faced with the imminent loss of First Amendment freedoms, AFP is suing both to obtain a declaration that the Act is unlawful on its face and as applied to AFP, and to enjoin its enforcement.

PARTIES

12. Plaintiff Americans for Prosperity is a Washington, D.C. nonprofit corporation headquartered in Virginia. AFP qualifies as a social welfare organization under Section 501(c)(4) of the Internal Revenue Code. The organization's state director in New Jersey works out of an office in Morris County, located at 550 West Main Street, Suite 5, Boonton, NJ, 07005.

13. AFP's mission is to inspire people to embrace and promote principles and policies of economic freedom and liberty, and to educate and train citizens to advocate for the ideas, principles, and policies of a free society at the local, state, and federal levels. Two of its co-founders are Charles Koch and David Koch.

14. AFP funds its activities by raising charitable contributions from donors throughout the country, including in New Jersey.

15. Defendant Gurbir Grewal is Attorney General of the State of New Jersey. In this capacity, he enforces civil and criminal violations of S150. N.J.S.A. 19:44A-21(b), 22(a).

16. Defendant Eric H. Jaso is Chairperson of the New Jersey Election Law Enforcement Commission, and Defendants Stephen M. Holden and Marguerite T. Simon are Commissioners of ELEC. As the Chairperson and Commissioners of ELEC, they are responsible for enforcing the provisions of the Act, including by conducting hearings regarding possible violations; imposing penalties; initiating

civil actions to enforce compliance with the Act, enjoining violations of the Act, and recovering any penalty prescribed by the Act; forwarding violations of the Act to the Attorney General for potential criminal prosecution; promulgating regulations and official forms; and performing other such duties as are necessary to implement the provisions of the Act. N.J.S.A.19:44A-6.

JURISDICTION AND VENUE

17. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343 because this action involves a claim arising under the United States Constitution and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, regarding the deprivation, under color of a State statute, of rights secured by the United States Constitution.

18. Venue in this Court is proper under 28 U.S.C. § 1391(b) because Defendants reside in the District and a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in the District.

FACTS

I. Senate Bill No. 150

19. Senate Bill No. 150 regulates and requires disclosure by any organization that qualifies as an Independent Expenditure Committee ("IEC"), which the Act defines as any Section 527 or 501(c)(4) organization that:

engages in influencing or attempting to influence the outcome of any election or the nomination, election, or defeat of any person to any State or local elective public

office, or the passage or defeat of any public question, legislation, or regulation, or in providing political information on any candidate or public question, legislation, or regulation, and raises or expends \$3,000 or more in the aggregate for any such purpose annually.

N.J.S.A. 19:44A-3(t).²

20. The Act defines “political information” to include “any statement . . . which reflects the opinion of the members of the organization on any candidate or candidates for public office, on any public question, or which contains facts on any such candidate, or public question whether or not such facts are within the personal knowledge of [the organization’s] members.” N.J.S.A. 19:44A-3(h). The law covers statements that are made in any form, “including, but not limited to, press releases, pamphlets, newsletters, advertisements, flyers, form letters, Internet or digital advertisements, or radio or television programs or advertisements.” *Id.*

21. Simply put, the Act requires disclosure by groups that discuss, in any way, any issue or fact that touches on a New Jersey election, legislation, or regulation. Its astonishingly broad terms ensnare not just electioneering communications, but also pure issue advocacy and even the transmission of mere “*facts*” related to “any candidate or public question, legislation, or regulation.”

² Citations to provisions of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 *et seq.*, are to those provisions as amended by S150.

22. The Act does not require that covered communications occur within a certain time period before an election, be broadcast over certain media or to a certain number of people, or even that the communications be directed towards anyone living or voting in New Jersey. A communication could be directed solely towards a small group of people who live outside New Jersey, but nonetheless trigger disclosure merely because it mentions a New Jersey election, candidate, legislation, or regulation, and entails expenditure of at least \$3,000.

23. Under S150, each IEC must submit “a cumulative quarterly report” to ELEC “not later than April 15, July 15, October 15 and January 15 of each calendar year.” N.J.S.A. 19:44A-8(d)(1).

24. After the report is submitted to ELEC, it is uploaded to ELEC’s public website for anyone to see and potentially further publicize. *See* N.J.A.C. 19:25-2.4(a); *see also* N.J.S.A. 47:1A-1 *et seq.*

25. Each quarterly report must detail “all contributions received in excess of \$10,000.” N.J.S.A. 19:44A-8(d)(1). For each such contribution over \$10,000, the IEC must disclose the donor’s “name and mailing address,” and, if the donor is an individual, the individual’s “occupation” and “the name and mailing address of the individual’s employer.” *Id.* Reports must disclose this same information for groups or individuals who co-sign an IEC’s loans or receive its expenditures. *Id.*

26. Other than the \$10,000 threshold, the Act has no limitations on which donors must be disclosed: it does not include an “earmarking” provision, whereby only those individuals who earmark their donations for spending on covered activities are disclosed, nor does it require any other nexus to New Jersey; any donor nationwide who donates more than \$10,000 to AFP is required to be disclosed, regardless of whether he or she has have ever had anything to do with New Jersey, and regardless of whether he or she directed his or her contribution to be used in a different State.

27. In addition, an IEC must disclose “all expenditures in excess of \$3,000”:

made, incurred, or authorized by it in influencing or attempting to influence the outcome of any election or the nomination, election, or defeat of any person to State or local elective public office or the passage or defeat of any public question, legislation, or regulation, or in providing political information on any candidate or public question, legislation, or regulation

N.J.S.A. 19:44A-8(d)(1). The report must also include the “purpose” of each expenditure. *Id.*

28. Failure to comply with S150’s reporting requirements results in civil and even criminal penalties. Any person responsible for preparing a quarterly report who inadvertently fails to comply can face a civil penalty of up to \$8,600 for the first offense and up to \$17,200 for the second and each subsequent offense. *See*

N.J.A.C. 19:25-17.3; *see also* N.J.S.A. 19:44A-22(a)(1). Deliberate failure to comply with the reporting requirements is a crime of the fourth degree, including (1) as to “[a]ny person who purposely files or prepares or assists in the preparation for filing or purposely acquiesces in the preparation or filing of any report required under this act which the person knows is false, inaccurate or incomplete in any material particular”; or (2) as to any person “who purposely fails or refuses to file any such report when required to do so pursuant to the provisions of this act.” N.J.S.A. 19:44A-21(b).

II. The Act’s Legislative History

29. Although it purports to be a “good government” bill, the origins of S150 are far from the ideals of Schoolhouse Rock. According to public reporting, the Act was taken up in the New Jersey legislature as a result of a dispute between Governor Phil Murphy and Senate President Stephen Sweeney. *See* Matt Arco, *Murphy-Sweeney Feud Helped Fuel Legislation to Expose ‘Dark Money’ in Jersey Politics. It’s Now on the Governor’s Desk.*, NJ.com (Mar. 26, 2019).³

30. Prior to the dispute, the Act had languished in the Senate for over two years without so much as a hearing. *See* S2430, 217th Leg. (identical bill as

³ Available at <https://www.nj.com/politics/2019/03/murphy-sweeney-feud-helped-fuel-legislation-to-expose-dark-money-in-jersey-politics-its-now-on-the-governors-desk.html>.

initially introduced in the New Jersey Senate, June 27, 2016)⁴; S1500, 218th Leg. (as reported by the Senate Budget and Appropriations Committee on January 17, 2019).⁵

31. The precursor to the Act, Senate Bill No. 1500 (“S1500”), was pushed forward by Senator Sweeney only after New Direction New Jersey, a 501(c)(4) organization with close ties to Governor Murphy, “angered [Senator] Sweeney” by “running ads advocating for the Democratic governor’s agenda during tense budget negotiations last summer with Democratic leaders in the Legislature.” *Arco, supra*.

32. New Direction’s leadership—which includes the Governor’s former campaign manager, Brendan Gill—had promised to disclose the organization’s donors by the end of 2018. *Id.* Among New Direction’s biggest donors was the New Jersey Education Association, New Jersey’s largest teacher’s union, which, through an affiliate group, spent a historic amount of money to defeat Senator Sweeney during the 2017 elections. Matt Friedman, *NJEA Contributed \$2.5M to Murphy-Aligned ‘Dark Money’ Group*, Politico.com (May 20, 2019)⁶; *3rd District*

⁴ Available at https://www.njleg.state.nj.us/2016/Bills/S2500/2430_I1.PDF.

⁵ Available at https://www.njleg.state.nj.us/2018/Bills/S1500/1500_R1.PDF.

⁶ Available at <https://www.politico.com/states/new-jersey/story/2019/05/16/njea-contributed-25m-to-murphy-aligned-dark-money-group-1019137>.

Race May Be Most Expensive Legislative Race in U.S. History, N.J. Elec. Law Enforcement Comm'n (Dec. 1, 2017).⁷

33. When New Direction failed to follow through on its promise to disclose its donors, Senator Sweeney “called for legislation” that would “require disclosure *retroactive* to January 2018.” Arco, *supra*. (emphasis added). Consistent with Senator Sweeney’s demand, an early version of S1500 mandated retroactive disclosure going back to January 1, 2018. S1500, 218th Leg. (as reported by the Senate Budget and Appropriations Committee on January 17, 2019). While this provision was eventually stripped from S1500, S150 still prohibits officeholders from any involvement in “the management or control of any independent expenditure committee,” N.J.S.A. 19:44A-10, which commentators have described as “a clear swipe at Gill, who is an Essex County freeholder,” Arco, *supra*.

34. The New Jersey legislature passed S1500 on March 25, 2019. *See* S1500, N.J. Office of Legis. Serv.⁸

35. On May 13, 2019 Governor Murphy conditionally vetoed S1500, citing serious doubts about its constitutional validity. *See* Conditional Veto from Governor Philip Murphy to N.J. Senate (May 13, 2019) (“Conditional Veto”).⁹

⁷ Available at https://www.elec.state.nj.us/pdf/press_releases/pr_2017/pr_12012017.pdf.

⁸ Available at <https://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=S1500>.

⁹ Available at https://www.njleg.state.nj.us/2018/Bills/S1500/1500_V1.PDF.

36. In his statement explaining the conditional veto, Governor Murphy first noted how, under binding Supreme Court precedent, laws that compel disclosure of a group's members or donors burden First Amendment rights and are subject to exacting scrutiny. *Id.* at 2–4 (citing *Buckley v. Valeo*, 424 U.S. 1 (1976) and *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958)). Governor Murphy acknowledged that courts have held that disclosure laws have met the exacting scrutiny standard when they apply to groups engaged in electioneering activity. *Id.* at 3. As Governor Murphy noted, however, S1500 compelled disclosure for groups that attempt to influence, or provide public information about, legislation or regulation that is wholly unconnected to any election or candidate. *Id.* He therefore “recommend[ed] revisions to eliminate [S1500’s] references to legislation and regulation.” *Id.* at 5.

37. The Conditional Veto also sought to correct several other flaws in S1500. It addressed two “loophole[s]” in the bill’s disclosure requirements. *Id.* at 5–6. First, under S1500, only 527 and 501(c)(4) organizations were treated as IECs. Accordingly, entities are free to circumvent disclosure simply by organizing as a limited liability corporation or adopting “other for-profit corporate forms.” *Id.* at 5. Other groups, including unions (501(c)(5)s), obviously spend vast amounts on elections without being subject to any aspect of the Act. There is no reason why the definition of IEC should, from a “good government” perspective, be

gerrymandered as it is to exempt *certain* corporate electioneering. Elsewhere, New Jersey campaign finance law broadly defines “political committees” and “continuing political committees” to include “*any* two or more persons acting jointly, or *any* corporation, partnership, or *any* other incorporated or unincorporated association” that engages in specified activities. N.J.S.A. 19:44A-3(i), (n) (emphasis added). Notably, 501(c)(6) organizations were included in S1500’s coverage before being stripped out at the last minute. *See* Statement to S1500, 218th Leg. (as reported by the New Jersey Senate on March 25, 2019).¹⁰ The only plausible explanation for why 501(c)(4)s are included, while other organizations are not, is that the organization run by the Governor’s former campaign manager is a 501(c)(4).

38. Second, S1500 defined IEC to exclude groups that coordinate their activities with a candidate or political party. Conditional Veto at 6. As a result, an organization can hide its information “merely by coordinating its legislative and regulatory advocacy with a candidate.” *Id.* Governor Murphy therefore recommended revisions to close both loopholes. *See id.*

39. In addition, Governor Murphy’s Conditional Veto recommended changes to “correct multiple apparent drafting errors,” including fixing “inconsistent” instructions on “how independent expenditure committees are to

¹⁰ Available at https://www.njleg.state.nj.us/2018/Bills/S1500/1500_S5.PDF.

make reports” and clarifying the proper “reporting schedule.” *Id.* As to the former, S1500 added a definition for electioneering communications, N.J.S.A. 19:44A-3(u), but that definition is used only once to denote a type of expenditure IECs must report if in excess of \$3,000, N.J.S.A. 19:44A-8(d)(2), even though IECs are already required to report any expenditure in excess of \$3,000, N.J.S.A. 19:44A-8(d)(1).

40. The Legislature’s lack of care in drafting the Act extended even beyond those flaws pointed out in the Conditional Veto. For example, S150, which covers conduct extending far beyond elections, amends New Jersey’s Campaign Contributions and Expenditures Act without amending Section 4 of the statute, which limits the application of the statute to elections, stating that “[t]he provisions of this act shall apply” to “any election” involving a public question or public office for the State or any of its political subdivision. N.J.S.A. 19:44A-4. Even affording New Jersey’s Legislature every conceivable benefit of the doubt, S150 betrays a sloppiness incompatible with the constitutional care that should be exercised within this sensitive realm.

41. Despite these glaring shortcomings and constitutional concerns pointed out by the Governor, the New Jersey Assembly and Senate threatened to override his conditional veto. Matt Arco, *N.J. Democrats Planned to Override Murphy. But a*

Last-Minute Deal Changed Things, NJ.com (June 10, 2019).¹¹ Ultimately, according to public reporting, the Governor agreed to sign an *identical* bill, S150, despite holding to his view that the law is unconstitutional. Matt Arco, *Murphy and Top Democrat Clash Over Deal that Avoided Veto Override -- A Day After They Announced It*, NJ.com (June 11, 2019).¹² The Assembly and Senate passed S150 in an emergency session on June 10, 2019. Governor Murphy signed the bill into law on June 17, 2019.

42. In signing the bill, Governor Murphy issued a signing statement reiterating his view that S150 “may infringe upon constitutionally protected speech and association rights” and contains “various apparent drafting errors.” Governor’s Statement Upon Signing Senate Bill No. 150 (June 17, 2019).¹³ Accordingly, the Governor stated he was signing the bill “based on an express commitment” from the Legislature to “pass legislation removing advocacy in connection with legislation and regulations from its parameters, thereby ensuring that the bill’s disclosure requirements apply to election-related advocacy, and

¹¹ Available at <https://www.nj.com/politics/2019/06/top-nj-democrats-wont-vote-to-override-murphy-as-both-sides-reach-last-minute-deal.html>.

¹² Available at <https://www.nj.com/politics/2019/06/murphy-says-top-democrat-is-wrong-about-deal-that-just-avoided-veto-override-of-dark-money-bill.html>.

¹³ Available at <http://d31hzhk6di2h5.cloudfront.net/20190617/d5/6c/b5/d7/94c04a9f14b0b88b6254ca19/S150.pdf>.

making previously recommended technical revisions.” *Id.* To date, no such corrective—or partially corrective—legislation has been enacted.

III. The Act’s Effect On Americans For Prosperity

43. The extraordinarily broad reach of S150’s provisions directly menaces AFP. AFP regularly spends more than \$3,000 per year engaging in issue advocacy that triggers disclosure under S150.

44. AFP has a New Jersey chapter that regularly engages in issue advocacy on state policies that enjoy widespread, bipartisan support. By way of example, AFP’s New Jersey chapter recently championed the Dignity for Incarcerated Primary Caretaker Parents Act, which (among other things) sought to end New Jersey’s practice of *shackling* incarcerated pregnant women while in labor. *See AFP’s Letter to Lawmakers in Support of Prison Reform*, Americans For Prosperity New Jersey (June 1, 2018).¹⁴ Such advocacy, which enjoyed broad-based, bipartisan support, presumably would be characterized as “attempting to influence” the proposed legislation under S150; at the very least, it would constitute a public communication that contains “facts” and “reflects [AFP’s] opinion” concerning the bill, which would fall within the “political information” component of the Act. *See* N.J.S.A. 19:44A-3(h), (t).

¹⁴ Available at <https://americansforprosperity.org/afps-letter-to-lawmakers-in-support-of-prison-reform/>.

45. The same holds true for AFP’s advocacy related to pension reform in New Jersey, *see, e.g., Garden State Is Hosed by Pension Crisis*, Americans For Prosperity New Jersey (Mar. 20, 2019),¹⁵ and its championing of occupational licensing reform for hair braiders in New Jersey to eliminate the requirement that these women, many of whom are single mothers, spend upwards of \$20,000 dollars to obtain licenses to braid hair, *see Keep Government Out of New Jerseyans Hair*, Americans for Prosperity New Jersey (Aug. 27, 2018).¹⁶ Such advocacy reflects the chapter’s opinions and could influence pending legislation.

46. AFP’s New Jersey chapter also publishes a “NJ Taxpayer Scorecard” tracking legislators’ voting records on key issues ranging from criminal justice reform to occupational licensing. *See, e.g., Taxpayer Scorecard: ’18–’19 Legislative Session*, Americans for Prosperity New Jersey.¹⁷ Although the report focuses squarely on the issues, the scorecard conveys facts and opinions, and it could conceivably be characterized as influencing the electoral chances of each and every legislator mentioned therein.

¹⁵ Available at <https://americansforprosperity.org/afp-nj-garden-state-is-hosed-by-pension-crisis/>.

¹⁶ Available at <https://americansforprosperity.org/afp-nj-keep-government-out-of-new-jerseyans-hair/>.

¹⁷ Available at <https://americansforprosperity.org/new-jersey-scorecard-2018-2/>.

47. AFP has not, however, historically engaged in traditional electioneering communications that advocate for or against the nomination or election of any particular candidate to office in New Jersey. Thus, AFP would be required to disclose its donors and expenditures under the Act, even though it does not engage in “electioneering” activity in New Jersey as that term is defined under federal laws and the laws of other States.

48. Compelled disclosure will chill the associational activity of AFP and its donors because they have a reasonable fear that threats, harassment, and reprisals will result from any disclosure of their donations. AFP and its associates are by no means universally popular. AFP’s opponents regularly strive to identify the organization’s donors in order to threaten, attack, and sow fear among those who support organizations like AFP. Whenever suspected donors are publicly outed, they face boycotts, character assassinations, personal threats, and even violence.

49. Many of these threats are disturbing and extreme. The New Jersey chapter’s former director, Erica Jedynak, received numerous harassing messages, and her husband has even received death threats. Indeed, the Federal Bureau of Investigation has investigated (and deemed credible) numerous unhinged death threats against AFP’s associates and even a threat of a terroristic attack. Charles and David Koch themselves have received numerous death threats leveled against them and their families, including their grandchildren.

50. AFP has suffered a cyberattack, received a bomb threat, and discovered a fire bomb outside one of its field offices.

51. AFP has also been the subject of appalling attacks on the internet. In 2018, former New Jersey director Erica Jedynak's husband was depicted as a Nazi in an online video denouncing his connections to AFP. In September 2011, AFP personnel discovered an online first-person shooter video game that encouraged players to murder AFP employees (who were depicted as zombies) inside the organization's national offices.

52. In addition to these disturbing threats, AFP sometimes faces violent protests at its events. At one gathering in Washington, D.C., protestors tried to shove their way inside the building, blocked attendees from exiting, and even knocked an elderly attendee down the stairs. At an outdoor event in Lansing, Michigan, protestors rushed AFP's gathering and cut the ropes holding the tent up, collapsing the tent on top of several activists, and one protestor threatened to trample event attendees.

53. In light of these events, AFP's donors reasonably fear violence, retaliation and harassment if their identities are publicly disclosed.

54. Accordingly, donors to AFP frequently—and understandably—insist that their personal information be kept private, and AFP zealously protects donor

confidentiality. That includes by restricting access to AFP's highly-secure donor database to only those individuals who have a need to know that information.

55. Some donors will refrain from giving to the extent doing so exposes them the risk of public disclosure. Just as public disclosure will discourage donations, it will drain donations and resources otherwise available to sustain AFP's continuing expression and activities.

COUNT I – FIRST AMENDMENT
(Pursuant to 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§ 1983, 1988)

56. AFP repeats, re-alleges, and incorporates the allegations in paragraphs 1–55 of this Complaint as though fully set forth herein.

57. The First Amendment to the United States Constitution applies to New Jersey by virtue of the Fourteenth Amendment.

58. The First Amendment protects the right to advocate anonymously, *see McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995), and to associate privately, *see NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462–63 (1958).

59. As the Supreme Court has recognized, “[t]he right to speak is often exercised most effectively by combining one’s voice with the voices of others.” *Rumsfeld v. FAIR*, 547 U.S. 47, 68 (2006) (citation omitted). The First Amendment therefore protects a “right to associate for the purpose of speaking.” *Id.* To vindicate this right, the Supreme Court has “held laws unconstitutional that require disclosure of membership lists for groups seeking anonymity.” *Id.* at 69 (citation

omitted). Such laws “ma[k]e group membership less attractive” and violate the First Amendment by “affecting the group’s ability to express its message.” *Id.*

60. “It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute an effective restraint on freedom of association.” *Bates v. Little Rock*, 361 U.S. 516, 523 (1960) (brackets, ellipsis, & citation omitted).

61. As “famously embodied in the Federalist Papers,” there is a long and “respected tradition of anonymity in the advocacy of political causes” in this country. *McIntyre*, 514 U.S. at 343 & n.6. For government to take the opposite approach by “[c]ompell[ing] disclosure of membership in an organization engaged in advocacy of particular beliefs” is akin to it “requir[ing] that adherents of particular religious faiths or political parties wear identifying arm-bands.” *NAACP*, 357 U.S. at 462 (citation & quotation marks omitted).

62. Nor is it any less noxious to compel disclosure of an organization’s *donors* than it is to compel disclosure of its *members*: the Supreme Court has “not drawn fine lines between contributors and members,” but has instead “treated them interchangeably.” *Buckley v. Valeo*, 424 U.S. 1, 66 (1976).

63. In violation of 42 U.S.C. § 1983, S150’s requirement, on pain of penalty, for the disclosure of the names and addresses of AFP’s contributors

infringes the rights to freedom of speech, expression, and association of AFP and its supporters, which rights are secured by the First and Fourteenth Amendments.

64. The compelled disclosure of donor information is unconstitutional both on its face and as applied to AFP.

65. On its face, S150's provisions are simultaneously overbroad and under-inclusive relative to its claimed purposes. They regulate speech of 501(c)(4) and 527 organizations in a manner that is proscribed by the First Amendment, impermissibly treating issue advocacy, and even the mere provision of political facts, as though they were electioneering activities.

66. In *ACLU of New Jersey v. New Jersey Election Law Enforcement Commission*, this Court struck down a disclosure requirement that applied to “political information organizations.” 509 F. Supp. at 1131–33. The provision defining the relevant conduct was the same provision as under the current law (N.J.S.A. 19:44A-3(h)) and used nearly identical language. This Court held the law’s sweep was “plainly unconstitutional,” and that “[t]he broad language in the New Jersey statute . . . is susceptible to no narrowing reading which would obviate its constitutional problems.” *ACLU*, 509 F. Supp. at 1132–33.

67. In *New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Commission*, the New Jersey Supreme Court held that the statutory phrase “to influence the content, introduction, passage or defeat of legislation” only

covered “activity which consists of *direct, express, and intentional communications with legislators* undertaken on a substantial basis by individuals acting jointly for the specific purpose of seeking to affect the introduction, passage, or defeat of, or to affect the content of legislative proposals.” 411 A.2d at 177, 179 (emphasis added). The court recognized that “[t]he act would be overreaching if its terms were to be enforced literally and inflexibly,” because “the oppressive effect of the statute on virtually all individuals engaging in nonpartisan as well as political conduct would far exceed the outermost bounds of its legitimate governmental purpose.” *Id.* at 176. In order to keep the statute within constitutional bounds and rescue it from invalidity, the court had to engage in what it referred to as “judicial surgery,” specifically by narrowing the otherwise overbroad meaning of “influence.” *Id.* at 179.

68. Moreover, S150 forces AFP to face a choice between two imminent First Amendment harms. Either it must publicly disclose its donors, which will chill the protected speech of its donors, or it must face civil and criminal penalties for failing to do so.

69. The “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 113 (3d Cir. 2013) (quoting *Elrod v. Burns*, 427

U.S. 347, 373 (1976) (plurality opinion)). AFP faces precisely such a loss of First Amendment freedoms unless this Court issues declaratory and injunctive relief.

PRAYER FOR RELIEF

Wherefore, AFP requests judgment be entered in its favor and against the Defendants as follows:

1. An order preliminarily enjoining the Defendants from enforcing S150's provisions compelling disclosure of donor information and compliance with its burdensome reporting requirements;

2. An order permanently enjoining the Defendants from enforcing S150's provisions compelling disclosure of donor information and compliance with its burdensome reporting requirements;

3. A declaration that S150's provisions compelling disclosure of donor information and compliance with its burdensome reporting requirements violates the First Amendment (as incorporated by the Fourteenth Amendment) both on their face and as applied to AFP, and are therefore null and void;

4. An award to AFP of its reasonable attorneys' fees and costs; and

5. A grant to AFP of such additional or different relief as the Court deems just and proper.

Dated: June 25, 2019

Respectfully submitted,

MARINO, TORTORELLA & BOYLE, P.C.

/s/ Kevin H. Marino

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Plaintiff, Americans for Prosperity, hereby demands a trial by jury as to all issues so triable in this case.

Dated: June 25, 2019

Respectfully submitted,

MARINO, TORTORELLA & BOYLE, P.C.

/s/ Kevin H. Marino

Kevin H. Marino

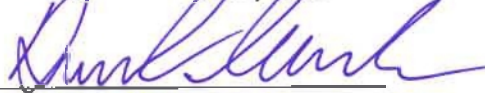
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